

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICHAEL J & JILL D THORNES,

Plaintiffs,

v.

IBM LENDER BUSINESS PROCESS  
SERVICES, INC. and FANNIE MAE,

Defendants.

CASE NO. C10-1716 MJP

ORDER DENYING TEMPORARY  
RESTRAINING ORDER

This comes before the Court on Plaintiffs' motion for a temporary restraining order and a preliminary injunction (Dkt. No. 2 and 3.) Having reviewed the filings, the Court DENIES Plaintiffs' motion for a temporary restraining order ("TRO") and ORDERS a hearing be set concerning Plaintiffs' motion for a preliminary injunction.

**Background**

On October 22, 2010, Plaintiffs Michael and Jill Thornes filed a petition alleging state and federal claims against IBM Lender Business Process Services, Inc. and Fannie Mae. (Dkt. No. 1.) Specifically, Plaintiffs claim violations of the Real Estate Settlement Procedures Act

(“RESPA”), 12 U.S.C. § 2601 et seq., violations of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 et seq., deceptive advertising, unjust enrichment, breach of fiduciary duty, fraud, breach of implied covenant of good faith and fair dealing, infliction of emotional distress, and negligence. (See Compl.)

In conjunction with their petition, Plaintiffs filed a motion for a temporary restraining order (“TRO”) and a motion for a preliminary injunction to enjoin the sale of their residence. (Dkt. Nos. 2 and 3.) The foreclosure sale is currently scheduled for Friday, November 5, 2010. (Dkt. No. 2-1, Pg. 3.)

### Analysis

#### I. Temporary Restraining Order

The Court considers four traditional factors in examining the Plaintiffs’ request for a TRO: (1) likelihood of success on the merits, (2) likelihood of irreparable harm, (3) the balance of equities, and (4) the public interest. Winter v. Nat’l Res. Def. Council, Inc., \_\_ U.S. \_\_\_, 129 S.Ct. 365, 374 (2008); see also Toyo Tire Holdings of Americas Inc. v. Continental Tire, 609 F.3d 975, 982 (9th Cir. 2010).

Plaintiffs’ petition, or complaint, fails to establish a likelihood of success on the merits because it fails to state a claim. The Federal Rules of Civil Procedure 8(a)(2) requires a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” This “requires more than labels and conclusions” and “formulaic recitation of the elements of a cause of action will not do.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)(internal citations omitted). “Factual allegations must be enough to raise a right to relief above the speculative level.” Id. Determining whether the allegations in a complaint are “plausible” is a “context-specific task that requires the reviewing court to draw on its judicial

1 | experience and common sense.” Ashcroft v. Iqbal, \_\_ U.S. \_\_, 129 S.Ct. 1937, 1950 (2009). In  
2 | addition, certain claims such as fraud or misrepresentation are subject to a more stringent  
3 | standard. Rule 9(b) requires “a party to state with particularity the circumstances constituting  
4 | fraud.” Fed. R. Civ. P. 9(b).

5 | Here, Plaintiffs’ petition focuses on the culpability of banks and mortgage companies  
6 | generally. In their complaint, Plaintiffs state deregulation and shoddy practices allowed  
7 | “unscrupulous lenders [to] swoop[ ] in” and caused harm to “the unsophisticated American  
8 | public.” (Compl. Pg. 3.) Plaintiffs also spend a significant portion of their complaint explaining  
9 | the mortgage industry’s activities, including “special purpose vehicle” and “risk layering.” (See  
10 | Compl.) Yet, the general practices of an industry do not suggest a particular defendant is liable  
11 | in a given case. Even if simply stated, specific facts regarding Plaintiffs’ own loan transaction  
12 | are required to meet federal pleading standards.

13 | Plaintiffs’ petition does not contain specific factual allegations relating to the Plaintiffs’  
14 | own loan or the foreclosure on Plaintiffs’ own home. In their complaint, Plaintiffs state they  
15 | “entered into a consumer contract for the refinance of a primary residence” and “Defendants,  
16 | acting in concert and collusion with others, induced Petitioner to enter into a predatory loan  
17 | agreement with Defendant.” (Compl. Pg. 1.) However, Plaintiffs do not allege any direct facts  
18 | surrounding the negotiation or execution of their refinance loan with Defendants or  
19 | documentation concerning when their deed of trust at issue was executed. (Compl. Pg. 1.) Even  
20 | Plaintiffs’ affidavit contains no facts regarding Plaintiffs’ personal experience to support their  
21 | claim and merely re-states the Plaintiffs’ general allegations. (Dkt. No. 2-2.) While Plaintiffs  
22 | provide a list of specific fees that were possibly charged at the settlement of their loan, it is  
23 | unclear whether these fees are in fact challenged by Plaintiffs because they immediately state  
24 |

1 they were “unable to determine whether or not the [ ] fees are valid in accordance with the  
2 restrictions provided by the various consumer protection laws.” (Compl. Pg. 11.)

3 In sum, Plaintiffs have alleged wrongs committed by the mortgage industry as a whole  
4 and only vaguely referred to Defendants’ conduct in their own loan transaction. Plaintiffs failed  
5 to meet the Rule 8(a) pleading standard for the majority of their claims and failed to meet the  
6 heightened Rule 9(b) pleading standard for the remaining fraud and misrepresentation claims.  
7 Since Plaintiffs’ petition fails to allege facts specific to their case and Plaintiffs have not  
8 submitted any additional declarations or affidavits tying the general practices of the industry to  
9 their case, the Court finds Plaintiffs are not likely to succeed on the merits. Based on this record,  
10 the Court DENIES Plaintiffs motion for a TRO.

11 II. Preliminary Injunction

12 Plaintiffs also filed a motion for a “temporary,” or preliminary, injunction to enjoin the  
13 foreclosure sale. Per the Western District of Washington’s Local Rule 7, the Court will not  
14 consider the motion until Friday, November 19<sup>th</sup>, 2010. While Plaintiffs’ current petition fails to  
15 state a claim, the Court will review any amended pleadings or supplemental materials Plaintiffs  
16 may file before that time. Additional filings should allege facts directly related to the dispute  
17 between Plaintiffs and Defendants, and not general statements concerning predatory lending  
18 practices.

19 A hearing concerning the preliminary injunction shall be held on Tuesday, November  
20 23<sup>rd</sup>, 2010 at 10:00 am. The Court will not assume its denial of a TRO means a foreclosure sale  
21 necessarily occurred on Friday, November 5, 2010. Therefore, the hearing will be held unless  
22 the parties update the Court that it is no longer warranted.

23 \\  
24

**Conclusion**

The Court DENIES Plaintiffs' request for a temporary restraining order. Concerning the Plaintiffs' motion for preliminary injunction, a hearing shall be held on November 23<sup>rd</sup>, 2010 at 10:00 am. The parties shall notify the Court if a hearing on the preliminary injunction is no longer necessary.

The clerk is ordered to provide copies of this order to all counsel.

Dated this 4th day of November, 2010.

A handwritten signature in black ink, appearing to read "Marsha J. Pechman", written over a horizontal line.

Marsha J. Pechman  
United States District Judge